

**PUBLIC HEALTH CODE (EXCERPT)**

**Act 368 of 1978**

**PART 51**

**GENERAL PROVISIONS**

**333.5101 Definitions and principles of construction.**

Sec. 5101. (1) As used in this article:

(a) "Care" includes treatment, control, transportation, confinement, and isolation in a facility or other location.

(b) "Communicable disease" means an illness due to a specific infectious agent or its toxic products that results from transmission of that infectious agent or its products from a reservoir to a susceptible host, directly as from an infected individual or animal, or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.

(c) "HIV" means human immunodeficiency virus.

(d) "HIV infection" or "HIV infected" means the status of an individual who has tested positive for HIV, as evidenced by either a double positive enzyme-linked immunosorbent assay test, combined with a positive western blot assay test, or a positive result under an HIV test that is considered reliable by the federal centers for disease control and is approved by the department.

(e) "Immunization" means the process of increasing an individual's immunity to a disease by use of a vaccine, antibody preparation, or other substance.

(f) "Infection" means the invasion of the body with microorganisms or parasites, whether or not the invasion results in detectable pathologic effects.

(g) "Serious communicable disease or infection" means a communicable disease or infection that is designated as serious by the department pursuant to this part. Serious communicable disease or infection includes, but is not limited to, HIV infection, acquired immunodeficiency syndrome, venereal disease, and tuberculosis.

(h) "Venereal disease" means syphilis, gonorrhea, chancroid, lymphogranuloma venereum, granuloma inguinale, and other sexually transmitted diseases which the department by rule may designate and require to be reported.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

**History:** 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 491, Eff. Mar. 30, 1989;—Am. 1994, Act 200, Imd. Eff. June 21, 1994.

**Compiler's note:** For transfer of certain powers and duties of the bureau of infectious disease control from the department of public health to the director of the department of community health, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

**Popular name:** Act 368

**333.5111 Rules.**

Sec. 5111. (1) In carrying out its authority under this article, the department may promulgate rules to:

(a) Designate and classify communicable, serious communicable, chronic, other noncommunicable diseases, infections, and disabilities.

(b) Establish requirements for reporting and other surveillance methods for measuring the occurrence of diseases, infections, and disabilities and the potential for epidemics. Rules promulgated under this subdivision may require a licensed health professional or health facility to submit to the department or a local health department, on a form provided by the department, a report of the occurrence of a communicable disease, serious communicable disease or infection, or disability. The rules promulgated under this subdivision may require a report to be submitted to the department not more than 24 hours after a licensed health professional or health facility determines that an individual has a serious communicable disease or infection.

(c) Investigate cases, epidemics, and unusual occurrences of diseases, infections, and situations with a potential for causing diseases.

(d) Establish procedures for control of diseases and infections, including, but not limited to, immunization and environmental controls.

(e) Establish procedures for the prevention, detection, and treatment of disabilities and rehabilitation of individuals suffering from disabilities or disease, including nutritional problems.

(f) Establish procedures for control of rabies and the disposition of nonhuman agents carrying disease, including rabid animals.

(g) Establish procedures for the reporting of known or suspected cases of lead poisoning or undue lead

body burden.

(h) Designate communicable diseases or serious communicable diseases or infections for which local health departments are required to furnish care including, but not limited to, tuberculosis and venereal disease.

(i) Implement this part and parts 52 and 53 including, but not limited to, rules for the discovery, care, and reporting of an individual having or suspected of having a communicable disease or a serious communicable disease or infection, and to establish approved tests under section 5125 and approved prophylaxes under section 5127.

(2) The department shall promulgate rules to provide for the confidentiality of reports, records, and data pertaining to testing, care, treatment, reporting, and research associated with communicable diseases and serious communicable diseases or infections. The rules shall specify the communicable diseases and serious communicable diseases or infections covered under the rules and shall include, but are not limited to, hepatitis B, venereal disease, and tuberculosis. The rules shall not apply to the serious communicable diseases or infections of HIV infection, or acquired immunodeficiency syndrome. The department shall submit the rules for public hearing under the administrative procedures act of 1969 by November 20, 1989.

**History:** 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 491, Eff. Mar. 30, 1989;—Am. 1989, Act 174, Imd. Eff. Aug. 22, 1989;—Am. 1994, Act 200, Imd. Eff. June 21, 1994.

**Popular name:** Act 368

**Administrative rules:** R 325.60 and R 325.171 et seq. of the Michigan Administrative Code.

### **333.5112 Pandemic influenza plan; establishment and maintenance; annual review and update; availability to public; report.**

Sec. 5112. (1) The department shall establish and maintain a pandemic influenza plan. The department shall consult with the United States department of health and human services and the federal centers for disease control and prevention to ensure that the pandemic influenza plan established by this state is consistent with the national preparedness efforts. The department, in consultation with the department of agriculture and the local health departments in this state, shall review and update the pandemic influenza plan at least annually. The department shall make the pandemic influenza plan and any updates to that plan available to the public through its website.

(2) Beginning 1 year after the effective date of this section and annually thereafter, the department shall prepare a report regarding the pandemic influenza plan established under subsection (1), including an assessment of the plan's effectiveness and this state's preparedness for an influenza outbreak, and present that report to the appropriate standing committees and appropriations subcommittees of the senate and house of representatives of the legislature that primarily address public health issues.

**History:** Add. 2006, Act 163, Imd. Eff. May 26, 2006.

**Popular name:** Act 368

### **333.5113 Medical treatment, testing, or examination as violative of personal religious beliefs; compliance with provisions regarding sanitation and reporting of diseases.**

Sec. 5113. (1) Except as otherwise provided in part 52 and section 9123, this article and articles 6 and 9 or the rules promulgated under those articles shall not be construed to require the medical treatment, testing, or examination of an individual who objects on the grounds that the medical treatment, testing, or examination violates the personal religious beliefs of the individual or of the parent, guardian, or person in loco parentis of a minor.

(2) This section does not exempt an individual from compliance with applicable laws, rules, or regulations regarding sanitation and the reporting of diseases as provided by this code.

**History:** 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 491, Eff. Mar. 30, 1989.

**Popular name:** Act 368

### **333.5114 HIV infected test subject; report; form; encoded individual case files.**

Sec. 5114. (1) Except as otherwise provided in this section, a person or governmental entity that obtains from a test subject a test result that indicates that the test subject is HIV infected or from a test subject who has already been diagnosed as HIV infected a test result ordered to evaluate immune system status, to quantify HIV levels, or to diagnose acquired immunodeficiency syndrome shall, within 7 days after obtaining a diagnostic test result or, for a nondiagnostic test result, within a time frame as determined by the department, report to the appropriate local health department or, if requested by the local health department, to the department on a form provided by the department or through electronic methods approved by the department all of the following information, if available:

(a) The name and address of the person or governmental entity that submits the report.

- (b) The name, address, and telephone number of the health care provider who diagnosed the test subject or who ordered the test.
- (c) The name, date of birth, race, sex, address, and telephone number of the test subject.
- (d) The date on which the specimen was collected for testing.
- (e) The type of test performed.
- (f) The test result.
- (g) If known, whether or not the test subject has tested positive for the presence of HIV or an antibody to HIV on a previous occasion.
- (h) The probable method of transmission.
- (i) The purpose of the test.
- (j) Any other medical or epidemiological information considered necessary by the department for the surveillance, control, and prevention of HIV infections. Information added by the department under this subdivision shall be promulgated as rules.

(2) An individual who undergoes a test for HIV or an antibody to HIV in a physician's private practice office or the office of a physician employed by or under contract to a health maintenance organization or who submits a specimen for either of those tests to that physician may request that the report made by the physician under this section not include the name, address, and telephone number of the test subject. Except as otherwise provided in section 5114a, if such a request is made under this subsection, the physician shall comply with the request and submit the specimen to the laboratory without the name, address, or telephone number of the test subject.

(3) A local health department shall not maintain a roster of names obtained under this section, but shall maintain individual case files that are encoded to protect the identities of the individual test subjects.

**History:** Add. 1988, Act 489, Eff. Mar. 30, 1989;—Am. 2004, Act 514, Eff. Apr. 1, 2005.

**Popular name:** Act 368

### **333.5114a Referral of individual to local health department; assistance with partner notification; information; legal obligation to inform sexual partners; criminal sanctions; partner notification program; confidentiality; priority duty of local health department; retention of reports, records, and data; information exempt from disclosure; biennial report.**

Sec. 5114a. (1) A person or governmental entity that administers a test for HIV or an antibody to HIV to an individual shall refer the individual to the appropriate local health department for assistance with partner notification if both of the following conditions are met:

- (a) The test results indicate that the individual is HIV infected.
- (b) The person or governmental entity that administered the test determines that the individual needs assistance with partner notification.

(2) A person or governmental entity that refers an individual to a local health department under subsection (1) shall provide the local health department with information determined necessary by the local health department to carry out partner notification. Information required under this subsection may include, but is not limited to, the name, address, and telephone number of the individual test subject.

(3) A local health department to which an individual is referred under subsection (1) shall inform the individual that he or she has a legal obligation to inform each of his or her sexual partners of the individual's HIV infection before engaging in sexual relations with that sexual partner, and that the individual may be subject to criminal sanctions for failure to so inform a sexual partner.

(4) A partner notification program operated by a local health department shall include notification of individuals who are sexual or hypodermic needle-sharing partners of the individual tested under subsection (1). Partner notification shall be confidential and conducted in the form of a direct, one-to-one conversation between the employee of the local health department and the partner of the test subject.

(5) If a local health department receives a report under section 5114(1) that indicates that a resident of this state or an individual located in this state is HIV infected, the local health department shall make it a priority to do all of the following:

- (a) Attempt to interview the individual and offer to contact the individual's sexual partners and, if applicable, hypodermic needle-sharing or drug-sharing partners. If the subject of the report is determined to have been infected with HIV in utero, the local health department shall attempt to interview the individual's parent or legal guardian, or both. The interview conducted under this subdivision shall be voluntary on the part of the individual being interviewed. The interview or attempted interview required under this subdivision shall be performed by a local health department within 14 days after receipt of a report under section 5114(1).

(b) Within 35 days after the interview conducted pursuant to subdivision (a), confidentially, privately, and in a discreet manner contact each individual identified as a sexual or hypodermic needle-sharing or drug-sharing partner regarding the individual's possible exposure to HIV. The local health department shall not reveal to an individual identified as a partner the identity of the individual who has tested positive for HIV or an antibody to HIV except if authorized to do so by the individual who named the contact, and if needed to protect others from exposure to HIV or from transmitting HIV. The local health department shall provide each individual interviewed under subdivision (a) and each individual contacted under this subdivision with all of the following information:

- (i) Available medical tests for HIV, an antibody to HIV, and any other indicator of HIV infection.
- (ii) Steps to take in order to avoid transmission of HIV.
- (iii) Other information considered appropriate by the department.

(6) The reports, records, and data of a local health department pertaining to information acquired under this section shall be retained by the local health department for not more than 90 days after the date of receipt or for a period established by rule of the department.

(7) Information acquired by the department or a local health department under this section or section 5114 is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(8) The department in consultation with local health departments shall submit a biennial report to the standing committees in the senate and house of representatives responsible for legislation pertaining to public health on the effect of this section on the department's efforts to monitor and control HIV infection and acquired immunodeficiency syndrome. The report shall include, but not be limited to, statistics on the total number of index cases reported, the total number of index cases reported with information identifying the test subject or a partner of the test subject, and the total number of partners actually contacted under this section, and an assessment of the effectiveness of the program, and recommendations to improve the effectiveness of the program, if any. The statistics included in the report shall be broken down by local health department jurisdiction.

**History:** Add. 1988, Act 489, Eff. Mar. 30, 1989;—Am. 2004, Act 514, Eff. Apr. 1, 2005.

**Popular name:** Act 368

### **333.5115 Communicable diseases and serious communicable diseases and infections; minimum procedures and standards for control and elimination.**

Sec. 5115. The department may establish minimum procedures and standards for health officers and other persons charged with administration and enforcement of the laws of this state relating to the discovery and care of an individual having or suspected of having a communicable disease or a serious communicable disease or infection. The procedures shall be reasonably related to the control and elimination of communicable diseases and serious communicable diseases and infections, and shall not conflict with the procedures for the control and elimination of communicable diseases and serious communicable diseases and infections set forth in this article.

**History:** Add. 1988, Act 491, Eff. Mar. 30, 1989.

**Popular name:** Act 368

### **333.5117 Individual with serious communicable disease or infection; order authorizing care; report; authority not restricted; financial liability for care.**

Sec. 5117. (1) A local health department that knows that an individual who has a serious communicable disease or infection including, but not limited to, tuberculosis or venereal disease, but not including HIV infection and acquired immunodeficiency syndrome, regardless of the individual's domicile, is in the local health department's jurisdiction and requires care, immediately shall furnish the necessary care in accordance with requirements established by the department pursuant to section 5111(h). The local health department shall issue an order authorizing the care.

(2) The local health department promptly shall report the action taken under this section to the county department of social services of the individual's probable place of domicile.

(3) This section does not restrict the authority of the local health department in furnishing care to the individual, pending determination by the local health department or, upon its request, by the county department of social services of the probable place of domicile of the individual.

(4) Financial liability for care rendered under this section shall be determined in accordance with part 53.

**History:** Add. 1988, Act 491, Eff. Mar. 30, 1989;—Am. 1994, Act 200, Imd. Eff. June 21, 1994.

**Popular name:** Act 368

### **333.5119 Individual applying for marriage license; availability of tests for venereal disease**

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**and HIV infection; educational materials; informing HIV infected applicants of test results; definitions.**

Sec. 5119. (1) An individual applying for a marriage license shall be advised through the distribution of written educational materials by the county clerk regarding prenatal care and the transmission and prevention of venereal disease and HIV infection. The written educational materials shall describe the availability to the applicant of tests for both venereal disease and HIV infection. The information shall include a list of locations where HIV counseling and testing services funded by the department are available. The written educational materials shall be approved or prepared by the department.

(2) A county clerk shall not issue a marriage license to an applicant who fails to sign and file with the county clerk an application for a marriage license that includes a statement with a check-off box indicating that the applicant has received the educational materials regarding the transmission and prevention of both venereal disease and HIV infection and has been advised of testing for both venereal disease and HIV infection, pursuant to subsection (1).

(3) If either applicant for a marriage license undergoes a test for HIV or an antibody to HIV, and if the test results indicate that an applicant is HIV infected, the physician or a designee of the physician, the physician's assistant, the certified nurse midwife, or the certified nurse practitioner or the local health officer or designee of the local health officer administering the test immediately shall inform both applicants of the test results, and shall counsel both applicants regarding the modes of HIV transmission, the potential for HIV transmission to a fetus, and protective measures.

(4) As used in this section:

(a) "Certified nurse midwife" means an individual licensed as a registered professional nurse under part 172 who has been issued a specialty certification in the practice of nurse midwifery by the board of nursing under section 17210.

(b) "Certified nurse practitioner" means an individual licensed as a registered professional nurse under part 172 who has been issued a specialty certification as a nurse practitioner by the board of nursing under section 17210.

(c) "Physician" means an individual licensed as a physician under part 170 or an osteopathic physician under part 175.

(d) "Physician's assistant" means an individual licensed as a physician's assistant under part 170 or part 175.

**History:** Add. 1988, Act 491, Eff. Mar. 30, 1989;—Am. 1990, Act 46, Imd. Eff. Mar. 30, 1990;—Am. 1994, Act 75, Imd. Eff. Apr. 11, 1994;—Am. 2000, Act 209, Eff. Jan. 1, 2001.

**Popular name:** Act 368

**333.5121 Prohibited conduct; misdemeanor.**

Sec. 5121. A person who commits any of the following acts is guilty of a misdemeanor:

(a) A county clerk who issues a marriage license to an individual who fails to present a certificate required under section 5119(2).

(b) A person who knows that an applicant for a marriage license has taken a test for venereal disease or HIV infection, or both, under section 5119(1), and who discloses either the fact that the applicant has taken the test or the results of the test, or both, except as required by law, and except as provided under section 5131.

(c) A physician who knowingly and willfully makes a false statement in a certificate given by the physician under section 5119.

**History:** Add. 1988, Act 491, Eff. Mar. 30, 1989.

**Popular name:** Act 368

**333.5123 Initial examination of pregnant woman or woman recently delivering infant; test specimens required; exceptions; record; availability of test results and records.**

Sec. 5123. (1) A physician or an individual otherwise authorized by law to provide medical treatment to a pregnant woman shall take or cause to be taken, at the time of the woman's initial examination, test specimens of the woman and shall submit the specimens to a clinical laboratory approved by the department for the purpose of performing tests approved by the department for venereal disease, HIV or an antibody to HIV, and for hepatitis B. If, when a woman presents at a health care facility to deliver an infant or for care in the immediate postpartum period having recently delivered an infant outside a health care facility, no record of results from the tests required by this subsection is readily available to the physician or individual otherwise authorized to provide care in such a setting, then the physician or individual otherwise authorized to provide care shall take or cause to be taken specimens of the woman and shall submit the specimens to a clinical



laboratory approved by the department for the purpose of performing department approved tests for venereal disease, for HIV or an antibody to HIV, and for hepatitis B. This subsection does not apply if, in the professional opinion of the physician or other person, the tests are medically inadvisable or the woman does not consent to be tested.

(2) The physician or other individual described in subsection (1) shall make and retain a record showing the date the tests required under subsection (1) were ordered and the results of the tests. If the tests were not ordered by the physician or other person, the record shall contain an explanation of why the tests were not ordered.

(3) The test results and the records required under subsection (2) are not public records, but shall be available to a local health department and to a physician who provides medical treatment to the woman or her offspring.

**History:** Add. 1988, Act 491, Eff. Mar. 30, 1989;—Am. 1994, Act 200, Imd. Eff. June 21, 1994.

**Popular name:** Act 368

### **333.5125 Birth of infant; treatment of eyes; report.**

Sec. 5125. A licensed health professional in charge of the care of a newborn infant, or if none, the licensed health professional in charge at the birth of an infant, shall treat the eyes of the infant with 1 or more of the prophylaxes approved by the department within 1 hour after the birth of the infant, or as soon after the birth of the infant as the health professional is present. If any redness, swelling, inflammation, or gathering of pus appears in the eyes of the infant or upon the lids or about the eyes of the infant within 2 weeks after the date of birth, a nurse, nurse-midwife, or other person having care of the infant shall report the condition to the physician in charge of the care of the infant, or if there is not a physician in charge of the care of the infant, to the local health department, within 6 hours after the discovery of the redness, swelling, inflammation, or gathering of pus.

**History:** Add. 1988, Act 491, Eff. Mar. 30, 1989.

**Popular name:** Act 368

### **333.5127 Minor infected with venereal disease or HIV; consent to treatment; informing spouse, parent, guardian, or person in loco parentis; financial responsibility.**

Sec. 5127. (1) Subject to section 5133, the consent to the provision of medical or surgical care, treatment, or services by a hospital, clinic, or physician that is executed by a minor who is or professes to be infected with a venereal disease or HIV is valid and binding as if the minor had achieved the age of majority. The consent is not subject to later disaffirmance by reason of minority. The consent of any other person, including a spouse, parent, or guardian, or person in loco parentis, is not necessary to authorize the services described in this subsection to be provided to a minor.

(2) For medical reasons a treating physician, and on the advice and direction of the treating physician, a physician, a member of the medical staff of a hospital or clinic, or other health professional, may, but is not obligated to, inform the spouse, parent, guardian, or person in loco parentis as to the treatment given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.

(3) A spouse, parent, guardian, or person in loco parentis of a minor is not financially responsible for surgical care, treatment, or services provided under this section.

**History:** Add. 1988, Act 491, Eff. Mar. 30, 1989.

**Popular name:** Act 368

### **333.5129 Individuals arrested and charged, bound over, or convicted of certain crimes; examination or testing for certain diseases; information and counseling; providing name, address, and telephone number of victim; providing test results to victim; transmitting test results and other medical information; confidentiality; referral of individual for appropriate medical care; financial responsibility; applicability of subsections (2), (3), and (4) to certain individuals; costs; definitions.**

Sec. 5129. (1) An individual arrested and charged with violating section 448, 449, 449a, 450, 452, or 455 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, 750.449a, 750.450, 750.452, and 750.455, or a local ordinance prohibiting prostitution or engaging or offering to engage the services of a prostitute may, upon order of the court, be examined or tested to determine whether the individual has venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, or acquired immunodeficiency syndrome. Examination or test results that indicate the presence of venereal disease, hepatitis B infection, hepatitis C

infection, HIV infection, or acquired immunodeficiency syndrome shall be reported to the defendant and, pursuant to sections 5114 and 5114a, to the department and the appropriate local health department for partner notification.

(2) Except as otherwise provided in this section, if an individual is arrested and charged with violating section 145a, 338, 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or section 7404 by intravenously using a controlled substance, or a local ordinance prohibiting prostitution, solicitation, gross indecency, or the intravenous use of a controlled substance, the judge or magistrate responsible for setting the individual's conditions of release pending trial shall distribute to the individual the information on venereal disease and HIV transmission required to be distributed by county clerks under section 5119(1) and shall recommend that the individual obtain additional information and counseling at a local health department testing and counseling center regarding venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, and acquired immunodeficiency syndrome. Counseling under this subsection shall be voluntary on the part of the individual.

(3) If a defendant is bound over to circuit court or recorder's court for a violation of section 145a, 338, 338a, 338b, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, and the district court determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant, the district court shall order the defendant to be examined or tested for venereal disease, hepatitis B infection, and hepatitis C infection and for the presence of HIV or an antibody to HIV. Except as provided in subsection (5), (6), or (7), or as otherwise provided by law, the examinations and tests shall be confidentially administered by a licensed physician, the department of community health, or a local health department. The court also shall order the defendant to receive counseling regarding venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, and acquired immunodeficiency syndrome, including, at a minimum, information regarding treatment, transmission, and protective measures.

(4) Except as otherwise provided in this section, upon conviction of a defendant or the issuance by the probate court of an order adjudicating a child to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, for violating section 145a, 338, 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or section 7404 by intravenously using a controlled substance, or a local ordinance prohibiting prostitution, solicitation, gross indecency, or the intravenous use of a controlled substance, the court having jurisdiction of the criminal prosecution or juvenile hearing shall order the defendant or child to be examined or tested for venereal disease, hepatitis B infection, and hepatitis C infection and for the presence of HIV or an antibody to HIV. Except as provided in subsection (5), (6), or (7), or as otherwise provided by law, the examinations and tests shall be confidentially administered by a licensed physician, the department of community health, or a local health department. The court also shall order the defendant or child to receive counseling regarding venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, and acquired immunodeficiency syndrome, including, at a minimum, information regarding treatment, transmission, and protective measures.

(5) If the victim or person with whom the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, engaged in sexual penetration or sexual contact or who was exposed to a body fluid during the course of the crime consents, the court or probate court shall provide the person or agency conducting the examinations or administering the tests under subsection (3) or (4) with the name, address, and telephone number of the victim or person with whom the defendant or child engaged in sexual penetration or sexual contact or who was exposed to a body fluid of the defendant during the course of the crime. If the victim or person with whom the defendant or child engaged in sexual penetration during the course of the crime is a minor or otherwise incapacitated, the victim's or person's parent, guardian, or person in loco parentis may give consent for purposes of this subsection. After the defendant or child is examined or tested as to the presence of venereal disease, of hepatitis B infection, of hepatitis C infection, or of HIV or an antibody to HIV, the person or agency conducting the examinations or administering the tests shall immediately provide the examination or test results to the victim or person with whom the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, engaged in sexual penetration or sexual contact or who was exposed to a body fluid during the course of the crime and shall refer the victim or other person for appropriate counseling.

(6) The examination or test results and any other medical information obtained from the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, by the person or agency conducting the examinations or administering the tests under subsection (3) or (4) shall be transmitted to the court or probate court and, after the defendant or child is sentenced or an order of disposition is entered, made part of the court record, but are confidential and shall be disclosed only to 1 or more of the following:

(a) The defendant or child.

(b) The local health department.

(c) The department.

(d) The victim or other person required to be informed of the results under this subsection or subsection (5) or, if the victim or other person is a minor or otherwise incapacitated, to the victim's or other person's parent, guardian, or person in loco parentis.

(e) Upon written authorization of the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or the child's parent, guardian, or person in loco parentis.

(f) As otherwise provided by law.

(7) If the defendant is placed in the custody of the department of corrections, the court shall transmit a copy of the defendant's examination and test results and other medical information to the department of corrections. If the child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is placed by the probate court in the custody of a person related to the child or a public or private agency, institution, or facility, the probate court shall transmit a copy of the child's examination or test results to the person related to the child or the director of the agency, institution, or facility. A person or agency that discloses information in compliance with this subsection or subsection (6) is not civilly or criminally liable for making the disclosure. A person or agency that receives test results or other medical information pertaining to HIV infection or acquired immunodeficiency syndrome under this subsection or subsection (6) is subject to section 5131 and shall not disclose the test results or other medical information except as specifically permitted under that section.

(8) If an individual receives counseling or is examined or tested under this section and is found to be infected with a venereal disease, hepatitis B, or hepatitis C or to be HIV infected, the individual shall be referred by the agency providing the counseling or testing for appropriate medical care. The department, the local health department, or any other agency providing counseling or testing under this section is not financially responsible for medical care received by an individual as a result of a referral made under this subsection.

(9) The requirements for the distribution of information concerning venereal disease, counseling concerning venereal disease, and examining or testing for venereal disease under subsections (2), (3), and (4) do not apply to an individual charged with or convicted of violating section 7404 by intravenously using a controlled substance or violating a local ordinance prohibiting the intravenous use of a controlled substance.

(10) The court may, upon conviction or the issuance by the probate court of an order adjudicating a child to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, order an individual who is examined or tested under this section to pay the actual and reasonable costs of that examination or test incurred by the licensed physician or local health department that administered the examination or test.

(11) An individual who is ordered to pay the costs of an examination or test under subsection (10) shall pay those costs within 30 days after the order is issued or as otherwise provided by the court. The amount ordered to be paid under subsection (10) shall be paid to the clerk of the court, who shall transmit the appropriate amount to the physician or local health department named in the order. If an individual is ordered to pay a combination of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments upon conviction in addition to the costs ordered under subsection (10), the payments shall be allocated as provided under the probate code of 1939, 1939 PA 288, MCL 710.21 to 712A.32, the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, and the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. An individual who fails to pay the costs within the 30-day period or as otherwise ordered by the court is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

(12) As used in this section:

(a) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.

(b) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other



intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(c) "Victim" includes, but is not limited to, a person subjected to criminal sexual conduct in violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

**History:** Add. 1988, Act 471, Eff. Mar. 30, 1989;—Am. 1994, Act 1, Imd. Eff. Feb. 16, 1994;—Am. 1994, Act 72, Imd. Eff. Apr. 11, 1994;—Am. 1994, Act 200, Imd. Eff. June 21, 1994;—Am. 1995, Act 253, Imd. Eff. Jan. 5, 1996;—Am. 2004, Act 98, Imd. Eff. May 13, 2004.

**Popular name:** Act 368

**333.5131 Serious communicable diseases or infections of HIV infection and acquired immunodeficiency syndrome; confidentiality of reports, records, data, and information; test results; limitations and restrictions on disclosures in response to court order and subpoena; information released to legislative body; applicability of subsection (1); immunity; identification of individual; violation as misdemeanor; penalty.**

Sec. 5131. (1) All reports, records, and data pertaining to testing, care, treatment, reporting, and research, and information pertaining to partner notification under section 5114a, that are associated with the serious communicable diseases or infections of HIV infection and acquired immunodeficiency syndrome are confidential. A person shall release reports, records, data, and information described in this subsection only pursuant to this section.

(2) Except as otherwise provided by law, the test results of a test for HIV infection or acquired immunodeficiency syndrome and the fact that such a test was ordered is information that is subject to section 2157 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2157.

(3) The disclosure of information pertaining to HIV infection or acquired immunodeficiency syndrome in response to a court order and subpoena is limited to only the following cases and is subject to all of the following restrictions:

(a) A court that is petitioned for an order to disclose the information shall determine both of the following:

(i) That other ways of obtaining the information are not available or would not be effective.

(ii) That the public interest and need for the disclosure outweigh the potential for injury to the patient.

(b) If a court issues an order for the disclosure of the information, the order shall do all of the following:

(i) Limit disclosure to those parts of the patient's record that are determined by the court to be essential to fulfill the objective of the order.

(ii) Limit disclosure to those persons whose need for the information is the basis for the order.

(iii) Include such other measures as considered necessary by the court to limit disclosure for the protection of the patient.

(4) A person who releases information pertaining to HIV infection or acquired immunodeficiency syndrome to a legislative body shall not identify in the information a specific individual who was tested or is being treated for HIV infection or acquired immunodeficiency syndrome.

(5) Subject to subsection (7), subsection (1) does not apply to the following:

(a) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed to the department, a local health department, or other health care provider for 1 or more of the following purposes:

(i) To protect the health of an individual.

(ii) To prevent further transmission of HIV.

(iii) To diagnose and care for a patient.

(b) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed by a physician or local health officer to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the physician or local health officer determines that the disclosure of the information is necessary to prevent a reasonably foreseeable risk of further transmission of HIV. This subdivision imposes an affirmative duty upon a physician or local health officer to disclose information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome. A physician or local health officer may discharge the affirmative duty imposed under this subdivision by referring the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome to the appropriate local health department for assistance with partner notification under section 5114a. The physician or local health officer shall include as

part of the referral the name and, if available, address and telephone number of each individual known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome.

(c) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed by an authorized representative of the department or by a local health officer to an employee of a school district, and if the department representative or local health officer determines that the disclosure is necessary to prevent a reasonably foreseeable risk of transmission of HIV to pupils in the school district. An employee of a school district to whom information is disclosed under this subdivision is subject to subsection (1).

(d) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the disclosure is expressly authorized in writing by the individual. This subdivision applies only if the written authorization is specific to HIV infection or acquired immunodeficiency syndrome. If the individual is a minor or incapacitated, the written authorization may be executed by the parent or legal guardian of the individual.

(e) Information disclosed under section 5114, 5114a, 5119(3), 5129, 5204, or 20191 or information disclosed as required by rule promulgated under section 5111(1)(b) or (i).

(f) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is part of a report required under the child protection law, 1975 PA 238, MCL 722.621 to 722.636.

(g) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed by the department of social services, the department of mental health, the probate court, or a child placing agency in order to care for a minor and to place the minor with a child care organization licensed under 1973 PA 116, MCL 722.111 to 722.128. The person disclosing the information shall disclose it only to the director of the child care organization or, if the child care organization is a private home, to the individual who holds the license for the child care organization. An individual to whom information is disclosed under this subdivision is subject to subsection (1). As used in this subdivision, "child care organization" and "child placing agency" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(6) A person who releases the results of an HIV test or other information described in subsection (1) in compliance with subsection (5) is immune from civil or criminal liability and administrative penalties including, but not limited to, licensure sanctions, for the release of that information.

(7) A person who discloses information under subsection (5) shall not include in the disclosure information that identifies the individual to whom the information pertains, unless the identifying information is determined by the person making the disclosure to be reasonably necessary to prevent a foreseeable risk of transmission of HIV. This subsection does not apply to information disclosed under subsection (5)(d), (f), or (g).

(8) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both, and is liable in a civil action for actual damages or \$1,000.00, whichever is greater, and costs and reasonable attorney fees. This subsection also applies to the employer of a person who violates this section, unless the employer had in effect at the time of the violation reasonable precautions designed to prevent the violation.

**History:** Add. 1988, Act 488, Eff. Mar. 30, 1989;—Am. 1989, Act 174, Imd. Eff. Aug. 22, 1989;—Am. 1989, Act 271, Imd. Eff. Dec. 26, 1989;—Am. 1992, Act 86, Eff. Mar. 31, 1993;—Am. 1994, Act 200, Imd. Eff. June 21, 1994;—Am. 1997, Act 57, Eff. Jan. 1, 1998.

**Popular name:** Act 368

**Administrative rules:** R 325.9001 et seq. of the Michigan Administrative Code.

**333.5133 Counseling; written, informed consent to HIV test; distribution of pamphlet regarding HIV test to test subject; development and contents; availability; signature of test subject; subsequent civil action barred; developing, writing, printing, and distributing pamphlet; HIV test performed on anonymous basis; partner notification; HIV test performed for purpose of research; standard protocol for HIV test; applicability of section to HIV test performed in health facility; applicability of subsections (1) to (3); informing patient of positive test results; counseling.**

Sec. 5133. (1) Except as otherwise provided in subsections (12) and (13), a physician who orders an HIV test or a health facility that performs an HIV test shall provide counseling appropriate to the test subject both before and after the test is administered.

(2) Except as otherwise provided in this part, a physician, or an individual to whom the physician has delegated authority to perform a selected act, task, or function under section 16215, shall not order an HIV test for the purpose of diagnosing HIV infection without first receiving the written, informed consent of the test subject. For purposes of this section, written, informed consent consists of a signed writing executed by the test subject or the legally authorized representative of the test subject that includes, at a minimum, all of the following:

(a) An explanation of the test including, but not limited to, the purpose of the test, the potential uses and limitations of the test, and the meaning of test results.

(b) An explanation of the rights of the test subject including, but not limited to, all of the following:

(i) The right to withdraw consent to the test at any time before the administration of the test.

(ii) The right under this part to confidentiality of the test results.

(iii) The right under this part to consent to and participate in the test on an anonymous basis.

(c) The person or class of persons to whom the test results may be disclosed under this part.

(3) Beginning July 28, 1989, a physician or an individual to whom the physician has delegated authority to perform a selected act, task, or function under section 16215 who orders an HIV test shall distribute to each test subject a pamphlet regarding the HIV test on a form provided by the department. The department shall develop the pamphlet, which shall include all of the following:

(a) The purpose and nature of the test.

(b) The consequences of both taking and not taking the test.

(c) The meaning of the test results.

(d) Other information considered necessary or relevant by the department.

(e) A model consent form for the signed writing required under subsection (2). The department shall include in the model consent form all of the information required under subsection (2)(a), (b), and (c).

(4) The department, the Michigan board of medicine, and the Michigan board of osteopathic medicine and surgery shall make the pamphlet required under subsection (3) available to physicians. The Michigan board of medicine and the Michigan board of osteopathic medicine and surgery shall notify in writing all physicians subject to this section of the requirements of this section and the availability of the pamphlet by July 10, 1989. Upon request, the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery shall provide copies of the pamphlet, free of charge, to a physician who is subject to this section.

(5) If a test subject is given a copy of the pamphlet required under subsection (3), the physician or individual described in subsection (3) shall include in the test subject's medical record a form, signed by the test subject, indicating that he or she has been given a copy of the pamphlet.

(6) A test subject who executes a signed writing pursuant to subsection (2) is barred from subsequently bringing a civil action based on failure to obtain informed consent for the HIV test against the physician who ordered the HIV test.

(7) The department shall provide the pamphlet required under subsection (3). The department shall develop the pamphlet and have it ready for distribution by June 28, 1989. The department shall write and print the pamphlet in clear, nontechnical English and Spanish. The department shall distribute the pamphlet, upon request and free of charge, to a physician or other person or a governmental entity that is subject to this section.

(8) In addition to complying with the duties imposed under subsection (7), the department shall provide copies of the pamphlet to the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery. The department shall provide copies of the pamphlet to other persons upon written request, at cost, and shall also provide copies of the pamphlet free of charge, upon request, to public or private schools, colleges, and universities.

(9) An individual who undergoes an HIV test at a department approved testing site may request that the HIV test be performed on an anonymous basis. If an individual requests that the HIV test be performed on an anonymous basis, the staff of the department approved testing site shall administer the HIV test anonymously or under the condition that the test subject not be identified, and shall obtain consent to the test using a coded system that does not link the individual's identity with the request for the HIV test or the HIV test results. If the test results of an HIV test performed under this subsection indicate that the test subject is HIV infected, the staff of the department approved testing site shall proceed with partner notification in the same manner in which a local health department would proceed as described in section 5114a(3) to (5).

(10) Subsection (2) does not apply to an HIV test performed for the purpose of research, if the test is performed in such a manner that the identity of the test subject is not revealed to the researcher and the test results are not made known to the test subject.

(11) A health facility may develop a standard protocol for an HIV test performed upon a patient in the health facility in preparation for an incision or invasive surgical procedure.

(12) This section does not apply to an HIV test performed upon a patient in a health facility if the conditions in subdivisions (a) and (b) or the conditions in subdivisions (a) and (c) are met:

(a) The patient is informed in writing upon admission to the health facility that an HIV test may be performed upon the patient without the written consent required under this section under circumstances described in subdivision (b) or (c). As used in this subdivision, “admission” means the provision of an inpatient or outpatient health care service in a health facility.

(b) The HIV test is performed after a health professional, health facility employee, police officer, or fire fighter, or a medical first responder, emergency medical technician, emergency medical technician specialist, or paramedic licensed under section 20950 or 20952 sustains in the health facility, while treating the patient before transport to the health facility, or while transporting the patient to the health facility, a percutaneous, mucous membrane, or open wound exposure to the blood or other body fluids of the patient.

(c) The HIV test is performed pursuant to a request made under section 20191(2).

(13) Subsections (1) to (3) do not apply if the test subject is unable to receive or understand, or both, the pretest counseling and the pamphlet described in subsections (1) to (3) or to execute the signed writing described in subsection (2), and the legally authorized representative of the test subject is not readily available to receive the pamphlet or execute written consent for the test subject.

(14) If the results of an HIV test performed pursuant to subsection (11) or (12) or under circumstances described in subsection (13) indicate that the patient is HIV infected, the health facility shall inform the patient of the positive test results and provide the patient with appropriate counseling regarding HIV infection and acquired immunodeficiency syndrome.

**History:** Add. 1988, Act 488, Eff. Mar. 30, 1989;—Am. 1994, Act 200, Imd. Eff. June 21, 1994;—Am. 1994, Act 420, Eff. Mar. 30, 1995.

**Popular name:** Act 368

### **333.5141 Reflex sympathetic dystrophy/complex regional pain syndrome (RSD/CRPS); work group; education program; materials and brochures; funds.**

Sec. 5141. (1) Upon appropriation of the necessary funding to support the work group and the education program, the department shall establish a reflex sympathetic dystrophy/complex regional pain syndrome (RSD/CRPS) work group that is composed of both public and private sector members. The RSD/CRPS work group, in consultation with health care providers and health-related organizations, shall develop and coordinate an RSD/CRPS education program to promote public awareness of the causes of RSD/CRPS and the value of early detection, diagnosis, and treatment of this disease. The RSD/CRPS program shall include a public education and outreach campaign utilizing written materials and brochures to promote awareness of RSD/CRPS among consumers, health care providers, teachers, and human services providers and to enable individuals to make informed decisions about their health. The written materials and brochures shall include, but are not limited to, information regarding each of the following:

(a) Cause and nature of RSD/CRPS.

(b) Risk factors that contribute to the manifestation of RSD/CRPS.

(c) All available treatment options for RSD/CRPS including the risks and benefits of each of those options.

(d) Environmental safety and injury prevention.

(e) Rest and use of appropriate body mechanics.

(f) Any other information that is relevant to RSD/CRPS.

(2) The educational materials and brochures developed under subsection (1) shall be made available to the public through the department's website or health promotions clearinghouse hotline and, if sufficient funding is available, the educational materials and brochures shall be distributed to local health departments, hospitals, and health care providers for distribution to the public. The RSD/CRPS work group shall also facilitate as a part of the RSD/CRPS program educational workshops that are open to the public. The workshops shall include, at a minimum, at least 1 physician presenter who is licensed under article 15 and is knowledgeable about RSD/CRPS.

(3) The department may accept and utilize federal or state funds or other public or private grants, gifts, donations, or appropriations to carry out the purposes of this section, including, but not limited to, promoting research to accurately identify, diagnose, and treat this disease.

**History:** Add. 2006, Act 678, Imd. Eff. Jan. 10, 2007.

**Popular name:** Act 368